Supreme Court of the United States

October Term, 1975
No. 75-1360

DAN FRANCIS,
Appellant,

vs.

CHRYSLER CORPORATION, KENNETH KROUSE,
Administrator, Bureau of Workmen's Compensation,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF OHIO

MOTION TO DISMISS APPEAL

EDWARD C. KAMINSKI
WALTER E. DEBRUIN
BUCKINGHAM, DOOLITTLE & BURROUGHS
1500—I Cascade Plaza
Akron, Ohio 44308
(216) 376-5300
Attorneys for Appellee, Chrysler Corporation

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

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Chrysler Corporation, Appellee herein, by its counsel, moves the Court to dismiss the appeal herein on the following ground: NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED BY THE APPEAL.

QUESTION PRESENTED

The Appellant in this case claims that §4123.84 O. Rev. Code, the Statute of Limitation provision under the Ohio Workmen's Compensation Law, is violative of an employee's rights guaranteed under the Equal Protection Clause of the 14th Amendment of the Constitution of the United States.

It is the position of Chrysler Corporation, Appellee, that when the facts of this case are measured against the past decisions of this Court, it is clear that there is no substantial federal question presented by this appeal and that Appellee's motion to dismiss should be sustained.

THERE IS NO SUBSTANTIAL FEDERAL QUESTION PRESENTED BY THIS APPEAL

A. The restricted scope of this Court's review of State regulatory legislation under the Equal Protection Clause is of long standing.

In the case of *McGowan v. Maryland*, 366 U.S. p. 420, Chief Justice Warren, in writing the opinion of the Court, said as follows:

> Although no precise formula has been developed, the Court has held that the 14th Amendment permits the states a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offered only if the classification rests on grounds wholly irrelevant to the achievement of the state's objective. The state legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.

Justice Frankfurter in a concurring opinion said:

> The restricted scope of this Court's review of state regulatory legislation under the Equal Protection clause is of long standing. The applicable principles are that a state statute may not be struck down as offensive of equal protection in its schemes of classification unless it is obviously arbitrary, and that, except in the case of a statute whose discriminations are so patently without reason that no conceivable situation of fact could be found to justify them, the claimant who challenged the statute bears the burden

> of affirmative demonstration that in the actual state of facts which surround its operation, its classification lacks rationality.

See also the opinion of Justice Black in the case of *Ferguson v. Skrupa*, 372 U.S. 726. See also the opinion of Justice Stewart in the case of *Dandridge v. Williams*, 397 U.S. 471:

B. §4123.84 O. Rev. Code does not provide an arbitrary and unreasonable classification of employees in violation of the Equal Protection Clause.

In his jurisdictional statement, counsel for the Appellant outlines the development of the Ohio Workmen's Compensation Law, particularly with reference to §4123.84, Ohio Rev. Code, but he has omitted some cardinal facts which may tend to distort the problem which was before the courts of Ohio.

For example, on pages 7 and 8 of said statement, Appellant correctly states that from 1919 until 1941, the Ohio law required only that an employee need make *oral* application for compensation either to the State Fund or to the self-insuring employer. Then in 1941, the legislature realized through experience that it was necessary to require that such applications be in writing to the Industrial Commission. At the same time, they provided that, in the case of self-insuring employers, any payments of workmen's compensation by said employer would serve as an alternative means of notice. It must be borne in mind that this section was the Statute of Limitations on workmen's compensation claims. Arthur Larson, in Vol. 3 of his work on Workmen's Compensation, para. 78.30, describes the twofold purpose of timely notice under workmen's compensation laws as follows:

The first is to facilitate prompt medical attention for the injury; the second is to provide the employer or the Commission with an opportunity for immediate investigation of the circumstances of the accident.

Counsel for the Appellant, on page 8 of his jurisdictional statement, accurately describes the action of the Ohio Legislature in amending §4123.84 to its present form, but he neglected to mention the preceding history of this section which led up to its adoption. We shall try to sketch that briefly here.

Up until 1959, under the above code provision, the only compensation payments made by an employer which would toll the two-year statute of limitation were the regular weekly payments, which did not include any payment for medical service. Then in 1959, the Ohio Legislature made a change in the workmen's compensation law by providing in addition that any benefits such as the furnishing of medicine, services or therapeutic devices, proprietary or otherwise, would also toll the Statute of Limitations.

But since most self-insuring employers maintained medical facilities which were available to employees regardless of whether the need was industrial or not, they were afraid that any kind of emergency or first-aid medical treatment to employees might be deemed to have tolled the Statute of Limitations notwithstanding the fact that the employee did not claim at that time that the condition for which he was treated was the result of any injury. This unwarranted extension of the provisions of the Workmen's Compensation Act was called to the attention of the Legislature and remedial action was taken to correct this anomaly. On October 1, 1963, the Legislature amended §4123.84 to read as it does today.

The decision of the Court of Appeals of Summit County, Ohio appears on page 18 of Appellant's brief, and at page 23, is quoted as follows:

> However, we fail to see how Revised Code 4123.84 (B)(2) invidiously discriminates against the worker in the factory of a self-insurer. He can toll the Statute by filing a written claim with the Industrial Commission whether employed by a self-insurer or a regular contributor to the fund. As an employee of a self-insurer, the plaintiff (Appellant) has the same options as his fellow employees of filing a written notice or submitting a bill of a licensed physician for payment. If he elects to receive treatment in some form other than by a hospital, or a licensed physician, he can still file a written notice. The classifications urged by plaintiff are really artificial subclasses. In reality, it actually takes less for an employee of a self-insurer to toll the Statute than it does for an employee of a non-self-insurer. . . the giving of notice to the self-insurer was reasonable grounds for the legislative classifications of specified, but limited, benefits necessary to toll the Statute. We cannot therefore inquire into the wisdom of such legislation.

The Court will also note the opinion of the Supreme Court of Ohio which appears beginning at page 14 of Appellant's jurisdictional statement. It will be noted that the Supreme Court quoted at length from the opinion of the Court of Appeals and affirmed the judgment of that Court.

We believe it to be abundantly clear from the above history that the Ohio Legislature did not act "arbitrarily" and that "The discrimination was not so patently without reason that no conceivable situation of fact could be found to justify it." Quite to the contrary (and all the courts

of Ohio have so found), the action of the Legislature in passing such legislation was based upon years of experience and the need for some reasonable requirement of notice. There can be no substantial federal constitutional question under such circumstances.

Justice Rehnquist, in his dissenting opinion in the case of *Webber v. Aetna Casualty and Insurance Company*, 406 U.S. 164, voiced a fear of this Court's involvement in such cases when he said,

> All legislation involves classification and line drawing of one kind or another. When this court expands the traditional 'reasonable basis' standard for judgment under the Equal Protection clause into a search for 'legitimate' state interests that the legislation may 'promote' and 'for fundamental personal rights' that it might 'endanger,' it is doing nothing less than passing policy judgments upon the acts of every state legislature in the country.

We respectfully submit that the Court should grant this Motion to Dismiss Appellant's Appeal.

EDWARD C. KAMINSKI
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BUCKINGHAM, DOOLITTLE & BURROUGHS
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